

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-3195

United States of America,

Appellee,

v.

Rayvell Vann,

Appellant.

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* Appeal from the United States
* District Court for the
* District of Nebraska.
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* [UNPUBLISHED]
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Submitted: June 4, 2004
Filed: June 10, 2004

Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Rayvell Vann challenges the sentence the district court¹ imposed upon his guilty plea to conspiring to commit bank fraud, in violation of 18 U.S.C. §§ 371 and 1344. On appeal, his counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967).

At sentencing, over Vann's objection, the district court added 3 levels to Vann's offense level for being a manager or supervisor of criminal activity involving

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

5 or more participants. See U.S.S.G. § 3B1.1(b). Vann’s total offense level of 18 resulted in a Guidelines imprisonment range of 57-71 months. After granting the government’s substantial-assistance downward-departure motion, the district court sentenced Vann to 36 months imprisonment and 5 years supervised release, and ordered him to pay restitution. On appeal Vann argues that the district court erroneously applied the aggravating-role enhancement.

We conclude that the issue is unreviewable, however, because Vann’s departure sentence is below the applicable Guidelines range, with or without the enhancement. See United States v. Baker, 64 F.3d 439, 441 (8th Cir. 1995) (challenge to enhancement unreviewable where defendant received sentence below applicable Guidelines range with or without enhancement); United States v. Wyatt, 26 F.3d 863, 864 (8th Cir. 1994) (per curiam) (challenge to enhancement unreviewable where sentence was downward departure from Guidelines range that would have resulted if defendant had prevailed); United States v. Dutcher, 8 F.3d 11, 12-13 (8th Cir. 1993) (extent of downward departure unreviewable regardless of district court’s reasons for refraining from departing further; rejecting argument that allegedly erroneous Guidelines “starting point” caused court to depart insufficiently).

Having found no nonfrivolous issues after reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we affirm. We also grant counsel’s motion to withdraw.
